

DELAWARE PUBLIC ARCHIVES
POLICY STATEMENT AND GUIDELINES

ELECTRONIC MAIL

COMMUNICATIONS AND RECORDS

Electronic mail systems, commonly called email, are becoming the communications method of choice for many public officials and public employees in Delaware. Email messages are often used as substitutes for the telephone. Simultaneously, Delaware government is using email systems to communicate substantive information previously committed to paper and transmitted by traditional methods. This interesting combination of communication and records keeping has created ambiguities on the status of email messages.

The management of email systems touches on nearly all functions which a government agency is dependent on records keeping for: privacy, administration, vital records management, administrative security, auditing, access, and archives. The need to manage email systems properly, then, is the same as for other records keeping systems - to ensure compliance with Delaware statutes concerning the creation of, retention of, and access to public records.

DEFINITIONS

Email systems are store-and-deliver software systems which transport messages from one computer user to another. Email systems range in scope and size from a local area network email system which shuffles messages to users within an agency or office; to a wide area network email system which carries messages to various users in various physical locations; to Internet email which allows users with an Internet address to send and receive messages from other Internet users around the world.

Email messages are text documents which are created, stored, and delivered in an electronic format. As such, email messages are similar to other forms of communicated messages, such as correspondence, memoranda, and circular letters. Email messages also contain features commonly associated with traditional records systems, including calendars, directories, distribution lists, and attachments such as word processing documents, spreadsheets, or images that are incorporated into an email message.

LEGAL BACKGROUND

29 Delaware Code §502(a) defines a “public record” as “any document, book, photographic image, electronic data recording, paper, sound recording or other material regardless of physical form or characteristics, including electronic records created or maintained in electronic information systems, made, used, produced, composed, drafted or otherwise compiled or collected or received in connection with the transaction of public business or in any way related to public purposes by any officer or employee of this State or any political subdivision thereof.” (Emphasis added.)

Because email messages meet the above criteria, all provisions of the Delaware Public Records Law (29 Delaware Code §501-526) apply. State and local government agency heads should ensure that all employees recognize that each email message may constitute a record, thus requiring that its disposition be planned, managed, and carried out according to the Delaware Public Records Law’s requirements for records retention and disposition schedules, and using procedures of the Delaware Public Archives (DPA) for authorizing records disposition. Public officials should also note that the retention of records maintained in electronic files is the same as for similar records maintained in traditional paper formats unless otherwise specified by an authorized retention schedule. It is the record and its content and function, not the media, which drive retention and disposition decisions, although the same record created in both paper and electronic format may have a different retention requirement for each format.

Public officials also need to be aware that email messages are subject to provisions of the Delaware Freedom of Information Act found in 29 Delaware Code §10001-10005 and the requirement of 29 Delaware Code §504 that public officials and employees “adequately document the transaction of public business” and “retain and adequately protect all public records in their custody.”

WHAT TO RETAIN? HOW LONG?

Email messages, like other public records generated across government, fall into two broad categories: records common to all agencies, and records unique to a specific agency.

Examples of records unique to a specific agency include a client case file, a register of permits issued by the agency, or a student cumulative file. Prescribed retention periods and instructions for records unique to an agency can be found on its agency-specific records retention schedule. This schedule is created by the Delaware Public Archives and the agency, and is reviewed by the State Auditor and the Attorney General (when appropriate) before becoming effective.

Examples of records common to all agencies include weekly reports, purchase orders, administrative memoranda, and routine correspondence. Prescribed retention periods and instructions for records common to all agencies can be found in General Records Retention Schedules issued by DPA. (These schedules are available on DPA's web site: <http://www.state.de.us/sos/dpa/default.shtml>.)

Using these schedules for guidance, we can classify email into four broad categories: Transitory Files; Retention Specific Records; Administrative Support Records; and Policy and Program Records.

Transitory Files are defined as:

Documents of short term interest that have no documentary or evidential value and normally need not be kept more than 1 month. Examples of transitory correspondence are:

1. Routine requests for information or publications which require no administrative action, policy decision, or special compilation or research, and copies of replies.
2. Originating office copies of letters of transmittal that do not add any information to that contained in the transmitted material, and receiving office copy if filed separately from transmitted material.
3. Quasi-official notices including memoranda and other records that do not serve as the basis of official actions, such as holiday notices, charity and welfare fund appeals, bond campaigns, etc.

Transitory Files should be retained by an agency for one (1) month after creation. Records meeting this definition can be routinely destroyed in the normal course of business by an agency.

Retention Specific Records are defined as:

Records with retention periods that are time-limited or linked to specific events (e.g. 6 months; 5 years; termination of employee; 3 years after close of case; 3 years after last visit; etc.). Examples of time-limited records are, but not limited to:

1. Case Files
2. Telephone Logs
3. Incident Reports
4. Unsuccessful Applications
5. Record Request Forms

Retention Specific Records should be retained for the length of their stated retentions. Records meeting this definition can be routinely destroyed in the normal course of business by an agency, assuming there are no outstanding legal or audit issues.

Administrative Support Records are defined as:

Records of a general facilitative nature created or received in the course of administering programs. Included are such records as:

1. Correspondence of a routine or repetitive type, such as requests for information;
2. Inter-office or inter-departmental communications which do not subsequently result in the formulation of policy;
3. Reference materials, sometimes of a technical nature, used but not created by the office;

4. Daily, weekly, or monthly office activity reports which are summarized in annual reports or which relate to routine activities (including work progress or statistical reports prepared in the office and forwarded to higher levels);
5. Personnel data of office staff which is duplicated in departmental personnel record;
6. Purchase orders, payment vouchers, travel expense statements or similar financial documents which are duplicated in department/division fiscal office files;
7. Daily, weekly, or monthly work assignments (including duty roster files) for office staff;
8. Calendars, appointment books, schedules, logs, diaries, and other records documenting meetings, appointments, telephone calls, trips, visits, and other daily activities of state employees; and
9. Unpublished calendars of events and activities.

Administrative Support Records should be retained at the agency until a successful audit has been completed and then destroyed. Records meeting this definition can be routinely destroyed in the normal course of business by an agency.

Policy and Program Records (Primary Mission Files) are defined as:

Records documenting the formulation and adoption of policies and procedures and the implementation or management of the programs or functions of the office or department. Included are such records as:

1. Policies and procedures developed by the agency which govern the operation of the agency;
2. Correspondence with citizens or other government officials regarding policy, procedure development, or program administration;
3. Annual, ad hoc, narrative, or statistical reports on program activities, achievements or plans;
4. Organizational charts and mission statements;
5. Studies regarding department or office operations;
6. Circular letters, directives or similar papers addressed to subordinate units or staff concerning policies, procedures or programs;
7. Records related to significant events in which the department or office participated; and
8. Photographs, published material, audio tapes and other record forms.

Policy and Program Records should be retained permanently and should be scheduled for transfer to DPA at some time during their life cycle.

HOW TO RETAIN RECORDS FROM AN EMAIL SYSTEM

DPA recommends that agencies explore three options when retaining records from an email system: on-line storage; near-line storage; and off-line storage. Each of these options carries with it benefits and disadvantages and may be affected by your agency's information technology environment.

On-line storage is defined as storage of email messages, metadata, and attachments in an email system which is being used at an agency. The system in use does not necessarily have to be the same throughout the retention. For example, a message stored in Beyond Mail may also be accessed, read, and then stored again by using Banyan 'Blue' Mail.

On-line storage maintains the full functionality of the email message, and allows users to recall the message at any time for reference or responding. A disadvantage of on-line storage is the potential costs and effects of storage on the performance of the email system. Any solution to email retention which includes on-line storage should be done only after consultation with the agency information resource manager and the agency network administrator.

Near-line storage is defined as storage of email messages, metadata, and attachments in an electronic record keeping system. This type of storage requires that the message, metadata, and attachments be removed from the on-line email system and stored in an electronic format. For example, a message stored in an on-line email system can be saved to a file on a local hard drive. The file should be stored in a format which is compatible with agency operations, and filed according to filing practices established by the agency and/or user.

Near-line storage allows the user to maintain a moderate amount of functionality, in that email messages stored near-line can be retrieved and referenced electronically. In storing email messages, metadata, and attachments, users should be careful to maintain a filing system which is consistent with established practices. This includes filing sequences as well as the use of naming conventions for computer files. In addition, users may want to consider “protecting” such records from alteration.

Off-line storage is defined as the storage of email messages, metadata, and attachments outside of an electronic record-keeping environment. The clearest example of this type of storage is to simply print out an email message to paper, with its contextual information and attachments in place, for filing within existing filing systems in the agency.

Off-line storage reduces dramatically the functionality, in that email messages are no longer retrievable in electronic form. However, off-line storage offers users the ability to integrate the filing of records in email systems within existing hard-copy filing systems in agencies. Any email messages, metadata, and attachments stored off-line should be done in a manner consistent with agency practice.

EMAIL MESSAGES AND THE RULES OF EVIDENCE

Agency records officers and local government records officials should be familiar with both state and federal “rules of evidence” requirements. For records maintained in electronic information systems, including email systems, courts concentrate on assurances that records, and the systems in which the records are created and maintained, are reliable. The reliability of the process or system used to produce records, not the type of media or technology used, - determines the admissibility of records in evidence. Moreover, the federal rules of evidence place the burden for the identification of relevant records on the records creator, and often within a ninety-day time period.

At a minimum, agency records officers and local government records officials should ensure that email systems used to create, receive and maintain email messages have full, complete, and up-to-date systems documentation; that systems follow all Department of Technology and Information (DTI) recommendations for system security; that complete systems backups are regularly and consistently performed; and that the system retains all data and “audit trails” necessary to prove its reliability as part of the “normal course of agency business.” Backup procedures need to be coordinated with disposition procedures and actions so that no copies of records are maintained after the retention period for the records has expired.

At the same time, agency records officers and local government records officials (together with the agency IRM and/or Information Systems Administrator), should develop internal procedures to identify “record copy” responsibilities for email systems. For example, agency policy documents which are transmitted to multiple recipients via an email system need not be maintained by each recipient beyond his or her need for this information if “record copy” responsibility is established so that the record is maintained by some office or agent for its established retention period. In this example, a logical “record copy” responsibility rests with the creator of the policy document. Prompt deletion of duplicate copies of email messages from an email system makes the system as a whole much easier to manage and reduces disk space consumed by redundant information. Again, agency records officers and local government records officials need to plan for records maintenance and “record copy” responsibilities for the records system to meet requirements for reliability and legal records disposition.

ACCESSIBILITY

A major challenge for agency records officers and local government records officials is to guarantee that records maintained in electronic information systems are accessible and usable for the entire length of the retention period.

Rapid changes and enhancements to both hardware and software propel this challenge. As many email systems have limitations in storage space that cause operational problems when messages are stored in the system beyond a specific period (such as sixty or ninety days), procedures must be in place to transfer records from the email system to another electronic records keeping system to meet retention requirements. Again, it is illegal in Delaware to destroy a public record, including records created in an email system, without a formal retention period being established for the record through an authorized records retention schedule, and without following records disposition procedures of the Delaware Public Archives.

Beyond this generic challenge of technology change, there are more mundane, but equally critical steps that must be in place to ensure that records created by email systems can be located and retrieved when required. Central is a system of standardized naming conventions and filing rules within the email systems. Email messages should be indexed in an organized and consistent pattern reflecting the ways in which records are used and referenced. Records maintained

electronically, including email messages, have an advantage over conventional "hard copy" document filing systems in that indexing for multiple access points is relatively simple and inexpensive, provided an effective indexing framework is in place. Planning records indexing and retrieval points is time well spent. Unnecessary time needed to retrieve electronic records is not productive staff time, and is an annoyance to the public as well.

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